ARA Environmental Services, Inc. and District 100, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 12-RC-6056

February 9, 1982

DECISION AND ORDER

By Chairman Van de Water and Members Jenkins and Hunter

Pursuant to a Decision and Direction of Election, an election by secret ballot was conducted on April 23, 1981, under the direction and supervision of the Regional Director. Thereafter, the Employer filed timely objections to the election, contending, inter alia, that the National Labor Relations Board does not possess jurisdiction over the Employer. Pursuant to the Board's Rules and Regulations, Series 8, as amended, the Regional Director then conducted an investigation of the objections and, concluding that the objections raised substantial and material issues, issued on May 29, 1981, an Order Directing Hearing on Objections. Accordingly, a hearing was held on June 18 and 19, 1981, before Hearing Officer Marvin P. Jackson. Subsequent thereto, on July 2, 1981, the Hearing Officer issued his Hearing Officer's Report and Recommendation on Objections and transferred therein the objection raising the issue of jurisdiction to the National Labor Relations Board for decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in the case, the Board finds:

The Employer, a wholly owned subsidiary of ARA Environmental Services, Inc., is a Maryland corporation engaged in Tampa, Florida, in the business of providing cleaning and security services for Eastern Air Lines, Inc. (Eastern), at the Tampa International Airport. The record establishes that the Employer receives annual revenues in excess of \$50,000 from providing these services to Eastern, an air carrier which in turn receives annual revenues in excess of \$1 million from providing passenger and freight transportation service in locations both within and outside the State of Florida. The parties stipulated that Eastern is an employer

subject to the Railway Labor Act and hence exempt from the jurisdiction of the National Labor Relations Act, as amended.

The Employer contends that the election should be voided, the Decision and Direction of Election vacated, and the instant petition dismissed, because the Employer's operations, including its labor relations, are so integrated and controlled by Eastern that jurisdiction is properly with the National Mediation Board under the Railway Labor Act. The Petitioner, on the other hand, contends that jurisdiction is properly with the National Labor Relations Board. Alternatively, the Petitioner contends that the Employer should be estopped from claiming jurisdiction is not properly with the National Labor Relations Board because of the failure to have raised such an issue prior to the election.

Section 2(2) of the Act provides in pertinent part that the term "employer" as used in the National Labor Relations Act should not include any person subject to the Railway Labor Act.

Accordingly, because of the nature of the jurisdictional question presented here, we requested the National Mediation Board to study the record in this case and to determine the applicability of the Railway Labor Act to the Employer. In reply, we were advised by the National Mediation Board that, following its reading of the record and of subsequent statements filed with them, the board had concluded that:

Based upon the nature of the activities performed by ARA-ES [the Employer] and the degree of control exercised by Eastern Airlines, the [National Mediation] Board is of the opinion that the activities and employees performing such activities are subject to the Railway Labor Act.¹

In view of the foregoing, we shall set aside the election of April 23, 1981, vacate the Decision and Direction of Election, and dismiss the instant petition.

ORDER

It is hereby ordered that the election of April 23, 1981, be, and it hereby is, set aside, and that the Decision and Direction of Election be, and it hereby is, vacated.

IT IS FURTHER ORDERED that the petition in Case 12-RC-6093 be, and it hereby is, dismissed.

ARA Environmental Services, Inc., 9 NMB No. 14 (1981).